



National Association of the Deaf

www.nad.org

July 24, 2017

Ex parte

via electronic filing

Marlene H. Dortch

Secretary, Office of the Secretary

Federal Communications Commission

445 12th Street, SW, Room TW-A325

Washington, DC 20554

**Re: Telecommunications Relay Services and Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities • CG Docket No. 03-123**

**Structure and Practices of the Video Relay Service Program • CG Docket No.
10-51**

Dear Ms. Dortch:

The undersigned member organizations of Consumer Groups represent 48 million deaf and hard of hearing¹ Americans who are accorded protection under the law to have equal access to telecommunications. In light of these protections, we and Gallaudet University, which houses the leading technical and research program for communication needs for deaf and hard of hearing people (Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center, DHH-RERC), are quite alarmed at the recent filings submitted by several video interpreters (VIs).² These VIs feel they should not be required to handle relay calls

¹ The use of the term “deaf and hard of hearing” is intended to encompass all deaf, hard-of-hearing, late-deafened, and DeafBlind individuals, including those with additional disabilities.

² See, e.g., Reply Comments of Kenneth Alexander Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Katie Heidenrich Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Lisa Fritz Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Theresa Schmitt Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Sara Hawkins Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Janice E. Yonke Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Ashley Jeralds Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Reply Comments of Patrick Sater Regarding Section C of the Notice of Inquiry, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017); Comments of Kenneth Alexander Regarding Sorenson's Petition for a Declaratory Ruling or Alternatively a Rulemaking Regarding Call Handling Obligations, CG Docket Nos. 10-51 and 03-123 (filed December 6, 2016); Comments of Rebecca Pursley Regarding Sorenson's Petition for a Declaratory Ruling or Alternatively a Rulemaking Regarding Call Handling Obligations, CG Docket Nos. 10-51 and 03-123 (filed December 8, 2016); Comments of Theresa Schmitt Regarding Sorenson's Petition for a Declaratory Ruling or Alternatively a Rulemaking Regarding Call Handling Obligations, CG Docket Nos. 10-51 and 03-123 (filed November 28, 2016); Comments of Lisa Fritz Regarding

appearing to involve illegal activity³ and should be permitted the ability to terminate any suspect calls. Consumer Groups and Gallaudet University are concerned that these troubling comments mischaracterize the role of a communications assistant (CA) as someone who "polices" and "enforces" against *perceived* illegal conversation content. Such a mischaracterization fails to recognize that allowing CAs to determine what calls are allowed or not allowed would be an outright denial of functional equivalence for telecommunications use for deaf and hard of hearing people.

The importance of access to equitable telecommunications cannot be overstated. Almost 25 years after the inception of nationwide Telecommunications Relay Services (TRS), people who are deaf or hard of hearing, irrespective of communication preferences, have come to rely on them for both their personal lives and work. For instance, a joint survey by the Gallaudet University Technology Access Program (TAP), the National Association of the Deaf (NAD), and Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) found that 95% of respondents rate Video Relay Services (VRS) as very important (they could not make phone calls without it), or important⁴. Additionally, three quarters of respondents stated that they use VRS for both personal use and work. In a related survey on IP-CTS, 90% of respondents stated that the availability of the service was very important or important to them⁵. Functional equivalence forms the bedrock of telecommunications access, and any attempts to restrict its scope are cause for great concern.

These VIs believe that they should not be required to provide telecommunications services during calls that they deem are furthering the commission of a crime, but instead should be permitted to monitor and report any such illegal activity. Such a position is outrageous and indefensible.

These VIs' proposal is un-American and unconstitutional in that they propose to strip deaf and hard of hearing Americans of their constitutional right to private telephone calls, and do so without wiretaps authorized by properly issued warrants. If both parties of a call were hearing, there is no one "policing" their call and ensuring they do not engage in criminal activities. Just because one party on a call is deaf does not create a constitutionally permissible reason to subject the call to monitoring and policing. Absent any court-sanctioned wiretap, two hearing persons on the voice telephone do not expect that the telephone company or a government-appointed third party to be monitoring their communications for unlawful conduct. Further, they do not expect that the telephone company or any third party will be making judgments as to whether to end the call based on content. Deaf and hard of hearing individuals have the same legal rights and protections. Therefore, any exception to strict confidentiality of TRS calls would undermine functional equivalence and infringe upon the constitutional right and expectation of deaf and hard of hearing callers to private and unhindered telecommunication calls. **Deaf and hard of hearing callers should not be subject to a lower expectation of privacy than hearing**

Sorenson's Petition for a Declaratory Ruling or Alternatively a Rulemaking Regarding Call Handling Obligations, CG Docket Nos. 10-51 and 03-123 (filed November 23, 2016).

³ A distinction is made between relay calls involving perceived illegal activity and phony calls made for the sole purpose of harassing or threatening a Communication Assistant (CA), which are not relay calls.

⁴ Consumer/TAP VRS Survey Public Results. CG Dockets Nos. 10-51 and 03-123 (filed July 5, 2017).

⁵Initial IP-CTS Survey Analysis by the Rehabilitation Engineering Research Center on Telecommunications Access. CG Dockets Nos. 13-24 and 03-123 (filed April 12, 2013).

users of the voice telephone system. The rights of deaf and hard of hearing users should be first and foremost in how relay calls are to be conducted; the discomfort of CAs is irrelevant and immaterial.

Anything to the contrary is not only unconstitutional but also a slippery slope for breaking confidentiality, especially for split-second judgments of brief calls without context. As Consumer Groups have long reiterated, "the Commission should not condone a slippery slope when it comes to maintaining the confidentiality of VRS calls."⁶ A "policed" environment would fundamentally undermine the meaning of a functionally equivalent TRS. Without a "dial tone" policy, there would be absolutely no trust in TRS.

The Commission has supported the rights of deaf and hard of hearing people to functionally equivalent telecommunications, and has explained in a 2004 rulemaking that "TRS providers have generally understood that they must relay all calls regardless of content," even if the call is obscene, "threatens the called party," or "discusses past or future criminal content."⁷ Similarly, in a 2004 Public Notice, the Consumer and Governmental Affairs Bureau indicated "the TRS statutory and regulatory scheme do not contemplate that the CA should have a law enforcement role by monitoring the conversations they are relaying."⁸ These positions of the Commission are in line with the intent of Congress in passing the Americans with Disabilities Act (ADA) in 1990. Congress directed the Commission to adopt regulations that "prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls" and "prohibit relay operators from disclosing the content of any relayed conversation."⁹ These mandates go to the heart of functional equivalency in telecommunications.

However, we agree that CAs should not be held liable for facilitating and keeping confidential all calls, regardless of content. Liability should not attach to the CAs' handling of any relay call so as to ensure that all calls are equally private, whether the parties on the calls are hearing or deaf.

The Commission should reiterate its position that TRS CAs are required to interpret all calls, even calls that they feel may be facilitating criminal activity or may conflict with their values or beliefs. CAs that fill TRS operator positions should be fully cognizant of what the position entails as a condition of employment. If a CA is not comfortable with such mandates, then that CA should reconsider whether this type of employment is a good fit for them.

Any infringement upon our right to access telecommunications on equal terms is unacceptable. We urge the Commission to act decisively to confirm that CAs must relay all calls without interference and without being held liable in doing so.

Respectfully submitted,

⁶ See, e.g., Reply Comments of Consumer Groups Regarding Notice of Inquiry and Further Notice of Proposed Rulemaking, CG CG Docket Nos. 10-51 and 03-123 (filed June 26, 2017).

⁷ *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 12,475, 12,572 ¶256 (2004) ("TRS FNPRM 2004").

⁸ *FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert*, Public Notice, 19 FCC Rcd. 10,740, 10,740-41 (2004) ("Public Notice").

⁹ 47 U.S.C. § 225(d)(1)(E), (F).

/s/
Zainab Alkebsi
Policy Counsel
National Association of the Deaf
zainab.alkebsi@nad.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Zainab Alkebsi, Policy Counsel • zainab.alkebsi@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org
8630 Fenton Street, Suite 121, Silver Spring, MD 20910
www.TDIforAccess.org

Deaf Seniors of America (DSA)

Nancy B. Rarus, President • nbrarus@gmail.com
5619 Ainsley Court, Boynton Beach, FL 33437
www.deafseniorsofamerica.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Bernie Palmer, Vice Chair • edgar.palmer@gallaudet.edu
8630 Fenton Street, Suite 121, Silver Spring, MD 20910-3803

Cerebral Palsy and Deaf Organization (CPADO)

Mark Hill, President • president@cpado.org
12025 SE Pine Street, #302, Portland, OR 97216
503.512.5066
www.cpado.org

Gallaudet University

Roberta Cordano, J.D., President • bobbi.cordano@gallaudet.edu
800 Florida Ave NE, Washington DC 20002
202.250.2837

cc: Karen Peltz Strauss (via Email)
Eliot Greenwald (via Email)